

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ALVIN GELLER</b>	:	DETERMINATION
	:	DTA NO. 816800
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1993.	:	

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Petitioner, Alvin Geller, 47 Davis Avenue, Apartment 3B, White Plains, New York 10605, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1993.

Petitioner, appearing *pro se*, and the Division of Taxation, by Terrence M. Boyle, Esq., (Michael J. Glannon, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by July 29, 1999, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Timothy J. Alston, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner established that the deficiency notice issued to him was incorrect.

***FINDINGS OF FACT***

1. As set forth in a Statement of Proposed Audit Changes dated June 9, 1997, the Division of Taxation ("Division") advised petitioner, Alvin Geller, as follows:

We do not have a record of a 1993 New York State income tax return on file for you. You did not reply to our previous letters asking about your New York return.

An exchange of information agreement with the Internal Revenue Service allowed us to get information from them. This information shows you filed a 1993 federal income tax return using a New York State address.

We used information from your federal return and computed your tax as a New York resident. The starting point for computing your New York tax is federal adjusted gross income. We allowed subtractions to income and any appropriate child care credit based on the federal information.

If the New York standard deduction was greater than your allowable itemized deduction it was allowed as follows:

- \$9,500 - Married filing joint or qualifying widow(er)
- 7,000 - Head of Household
- 6,000 - Single
- 4,750 - Married filing separate return
- 2,800 - Dependent filer

We will allow additional payments if your 1993 tax withheld from wages or estimated tax payments are greater than the amounts shown on this bill. Please furnish a wage and tax statement or canceled check showing a larger amount.

2. The Division's Statement of Proposed Audit Changes also specified that penalties were imposed pursuant to Tax Law § 685(a)(1); (b)(1) and (2), for late filing, negligence and an additional penalty for negligence or intentional disregard of the Tax Law, respectively. Petitioner was advised that if he had filed a 1993 New York State return, he should provide a complete copy of it to the Division including wage and tax statements and that, if he had made a payment with the return, he should provide the deposit serial number stamped on the face of the check. Petitioner was further advised that if he was a full-year resident of another state he should provide documentation to establish the same, including a copy of any income tax return filed with the other state. Finally, petitioner was advised that if he was a part-year resident of another

state, he should show the period of residence in New York State, New York City or Yonkers, and include a copy of any income tax return filed with the other state.

3. The Division's Statement of Proposed Audit Changes reflects petitioner's Federal adjusted gross income as \$55,365.00, and thereafter reduces the same by \$7,000.00 (New York Head of Household standard deduction) and \$1,000.00 (dependent exemption), to arrive at New York taxable income of \$47,365.00 and a New York tax liability of \$3,247.00. The statement indicates that no New York tax was withheld, thus leaving the \$3,247.00 tax liability as the amount of petitioner's tax deficiency for 1993.

4. The Division subsequently issued to petitioner, Alvin Geller, a Notice of Deficiency, dated October 14, 1997, asserting a personal income tax deficiency for the year 1993 in the amount of \$3,247.00, plus penalties and interest. This asserted deficiency was premised on the Division's finding, as detailed in its Statement of Proposed Audit Changes, that in 1993 petitioner was a New York State resident, had earned income in New York State and failed to file a personal income tax return or pay income tax on his New York State income.

5. By letter dated February 13, 1998 the Division advised petitioner that it had received a copy of petitioner's 1993 Wage and Tax Statement (Form W-2) from the Internal Revenue Service and that petitioner's 1993 W-2 indicated State income tax withheld of \$813.92. The letter further advised petitioner that the 1993 income tax deficiency was recomputed to allow credit for State income tax withheld and that the additional tax due against petitioner was now \$2,433.08, plus penalties and interest.

6. Following a conciliation conference, the Division issued a Conciliation Order (CMS No. 164217), dated August 14, 1998, which recomputed the Notice of Deficiency in accordance with the February 13, 1998 letter.

7. Petitioner continued his challenge by filing a petition wherein he asserted that the Division's determination of his 1993 income tax liability was erroneous; that the Division did not properly credit his 1993 withholding in calculating his 1993 New York State income tax liability; that the Division improperly used petitioner's 1993 Federal return to determine his 1993 State tax liability; and that placing the burden of proof on petitioner results in a violation of due process and is unconstitutional.

8. Although given until July 29, 1999 to do so, petitioner did not file any documents or brief in support of his position in this matter.

### ***CONCLUSIONS OF LAW***

A. On three previous occasions, the Tax Appeals Tribunal has considered and rejected similar arguments raised by petitioner with respect to income tax assessments for the years 1989, 1991 and 1992 (*see, Matter of Geller*, Tax Appeals Tribunal, August 20, 1998; *Matter of Geller*, Tax Appeals Tribunal, May 13, 1999; *Matter of Geller*, Tax Appeals Tribunal, June 3, 1999). The arguments raised by petitioner in this matter are likewise without merit.

B. The petition of Alvin Geller is hereby denied and the Notice of Deficiency dated October 14, 1997, as modified by the Conciliation Order dated August 14, 1998, is sustained.

DATED: Troy, New York  
September 30, 1999

/s/ Timothy J. Alston  
ADMINISTRATIVE LAW JUDGE